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February 10, 2000

**VIA HAND DELIVERY**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
The Portals II  
445 - 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

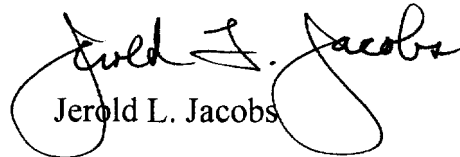
In re: Establishment of a Class A Television Service  
MM Docket Nos. 00-10 and 99-292

Dear Ms. Salas

On behalf of Noe Corp., L.L.C. licensee of television station KNOE-TV, Monroe, Louisiana; Louisiana Television Broadcasting Corporation, licensee of television station WBRZ(TV), Baton Rouge, Louisiana; and Channel 3 of Corpus Christi, Inc., licensee of television station KIII(TV), Corpus Christi, Texas, transmitted herewith are an original and six (6) copies of their Comments in the above-captioned rulemaking proceeding implementing the Community Broadcasters Protection Act of 1999.

If you have any questions concerning the Comments, please direct them to the undersigned.

Very truly yours

  
Jerold L. Jacobs

JLJ:btc  
Enclosure

cc: Ms. Wanda Hardy (w/diskette)  
International Transcription Service (w/diskette)

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

# Federal Communications Commission

In the Matter of	)	
	)	MM Docket No. 00-10
Establishment of a Class A	)	MM Docket No. 99-292
Television Service	)	RM-9260

TO: The Commission

## COMMENTS OF THREE TV LICENSEES ENTITLED TO DTV MAXIMIZATION

NOE CORP. L.L.C., LOUISIANA TELEVISION BROADCASTING CORPORATION, and CHANNEL 3 OF CORPUS CHRISTI, INC. (together, the "Three DTV Maximizers" or the "Maximizers"), licensees of three full-power television stations in Monroe, Louisiana (Station KNOE-TV), Baton Rouge, Louisiana (Station WBRZ(TV)), and Corpus Christi, Texas (Station KIII(TV)), respectively, by their attorneys, pursuant to §1.415 of the Commission's Rules, hereby submit their Comments on Paragraphs 30-34 of the Order and Notice of Proposed Rule Making ("NPRM"), FCC 00-16, released January 13, 2000, in the above-captioned matter.

### **I. Introduction**

1. The Community Broadcasters Protection Act of 1999 ("CBPA"), Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I, *codified at* 47 U.S.C. §336(f), primarily focuses on establishing a Class A television license available to licensees of qualifying low-power television ("LPTV") stations. However, a key reciprocal consideration in the CBPA is interference protection for licensed and to-be-licensed full-power analog and digital ("DTV")

television stations. This interference regulatory concern is actually expressed in two separate sections of CBPA:

- Section f(1)(D) – “Resolution of Technical Problems” – which specifies that the Commission must take steps to ensure replication of a full-power DTV applicant’s service area under Sections 73.622 and 73.623 of the Rules, and to permit maximization of a full-power DTV applicant’s service area consistent with Sections 73.622 and 73.623 if such DTV applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999 and filed a bona fide application for maximization by May 1, 2000; and
- Section (f)(7)(A) – “No Interference Requirement” – which prohibits granting or modifying a Class A license unless the applicant or licensee shows that the Class A station will not cause interference within the predicted Grade B contour of any analog full-power TV station or the DTV service areas provided in the DTV Table of Allotments, the DTV service areas protected in Section 73.622(e) and (f) of the Rules, the DTV service areas of full-power stations subsequently granted by the Commission prior to the filing of a Class A application, or the DTV service areas of a full-power station seeking to maximize its power under Section (f)(1)(D) of the CBPA.

2. For the reasons which follow, the Three DTV Maximizers urge that the Report and Order in this proceeding should provide maximum interference protection for full-power DTV maximizers and analog replicators. In that way, the Commission will fully implement the letter and spirit of Sections ((f)(1)(D) and (f)(7)(A) of the CBPA.

## **II. Replication and Maximization are Cumulative Interference-Protection Devices for Full-Power Stations**

3. The chief discussion of interference protection for full-power stations occurs in Paragraphs 30-34 of the NPRM. There, the Commission restates (at ¶30), and the Maximizers endorse, the requirement in Section (f)(7)(A) of the CBPA that Class A stations may not interfere with DTV broadcasters’ ability to replicate insofar as possible their NTSC service areas. The Maximizers likewise support the view in Paragraph 30 that Class A stations should not be

permitted to cause even *de minimis* levels of interference to DTV service, other than a 0.5% rounding allowance.

4. In Paragraph 32 of the NPRM, the Commission notes that Section (f)(1)(D) of the CBPA prohibits granting Class A applications for license or license modification where the proposal would interfere with stations seeking to “maximize power” under the Rules, if the full-power station has filed a timely notice of intent to maximize or an application for maximization. The Commission asks whether the term “maximize” in the statute refers only to situations in which stations seek power and/or antenna height greater than the allotted values, or whether the term also refers to stations seeking to extend their service area beyond the NTSC replicated area by relocating their station from the allotted site.

5. As the Commission points out in Paragraph 33 of the NPRM, the CBPA’s language is ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Although Section (f)(1)(D) appears to tie replication and maximization to resolution of technical problems, Section (f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of Section (f)(1)(D). The Maximizers fully support the Commission’s proposed statutory interpretation that Class A applicants must protect all stations seeking to replicate or maximize DTV power, regardless of whether the DTV station’s proposal involves “technical problem” within the meaning of Section (f)(1)(D). In other words, the replication and maximization interference-protection provisions in Sections (f)(1)(D) and (f)(7)(A) for full-power DTV stations should be treated as cumulative interference protection devices that are not dependent upon each other. This is the only

interpretation that is congruent with the intent of Congress to protect the ability of DTV stations to replicate and maximize their service areas.

### **III. Replication and Maximization Rights Should be Protected Even Where Licensees are Uncertain About Their Eventual DTV Channel**

6. The Commission requests comment in Paragraph 34 of the NPRM on how the maximization rights in the CBPA can be applied to full-power stations that maximize their DTV facilities but subsequently move their digital operations to their original analog channel after the DTV transition. As the Commission states, some of these stations may not be in a position to file maximization applications on their analog channels by the May 1, 2000 deadline. The Commission also asks whether and how these stations can preserve the right to maximize on their analog channels should they revert to those channels at the end of the DTV transition. Finally, the Commission seeks comment on how the maximization concept applies to full power stations for which their DTV channel allotment or both the NTSC and DTV channel allotments lie outside the DTV core spectrum (Channels 2-51), and how these stations can preserve their right to replicate their maximized DTV service area on a new in-core channel once that channel has been assigned.

7. These questions are especially important to the Three DTV Maximizers because each Maximizer faces one or more of the dilemmas posed in Paragraph 34 of the NPRM. Specifically:

- Station KNOE-TV (Channel 8) was allotted DTV Channel 55 as its transitional channel, and it has filed a Petition for Rulemaking to substitute DTV Channel 7 for Channel 55. If its petition is granted, KNOE-TV intends to maximize its facilities on DTV Channel 7 as an interim matter. However, in the long run, KNOE-TV intends to return to Channel 8 as its permanent DTV allotment and to maximize operation on DTV Channel 8. KNOE-TV stated all of these facts in its December 30, 1999 letter of intent to maximize its DTV facilities ("letter of

intent”), which it filed pursuant to Public Notice, DA 99-2729, released December 7, 1999;

- Station WBRZ(TV) (Channel 2) was allotted DTV Channel 42 as its transitional channel, and it has filed a Petition for Rulemaking to substitute DTV Channel 13 for Channel 42. If its petition is granted, WBRZ intends to maximize its facilities on DTV Channel 13. If its petition is denied, WBRZ, in all probability, will return to Channel 2 as its permanent DTV allotment. However, WBRZ will undertake an engineering study to determine whether operation on DTV Channel 2 or DTV Channel 42 is preferable, and may ultimately determine to maximize operation on DTV Channel 42 or DTV Channel 2. WBRZ stated all of these facts in its December 30, 1999 letter of intent to the Commission; and
- Station KIII(TV) (Channel 3) was allotted DTV Channel 47 as its transitional channel, and it has filed a Petition for Rulemaking to substitute DTV Channel 8 for Channel 47. If its petition is granted, KIII intends to maximize its facilities on DTV Channel 8. If its petition is denied, KIII, in all probability, will return to Channel 3 as its permanent DTV allotment. However, KIII will undertake an engineering study to determine whether operation on DTV Channel 3 or DTV Channel 47 is preferable, and may ultimately determine to maximize operation on DTV Channel 47 or DTV Channel 3. KIII stated all of these facts in its December 30, 1999 letter of intent to the Commission.

8. As Paragraph 34 of the NPRM postulates, the Maximizers anticipate that they will not be in a position to file final maximization applications by the May 1, 2000 deadline, because their pending DTV rulemaking proceedings will still be unresolved. Moreover, Station KNOE-TV’s current DTV allotment is Channel 55 – outside of the “core spectrum”. In the first instance, the Maximizers have sought to preserve their statutory right to maximize their facilities by filing letters of intent which identify all of the possible channels<sup>1/</sup> upon which they may maximize their DTV facilities. The Maximizers urge that the Report and Order should require the Commission’s analog and DTV engineering data bases to be annotated to provide DTV

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<sup>1/</sup> In the Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588, 14628 ¶84 (1997), the Commission stated that it “will allow broadcasters, wherever feasible, to switch their DTV service to their existing NTSC channels at the end of the transition if they so desire”.

interference protection for all of the identified channels in letters of intent for a limited period of time (see below).

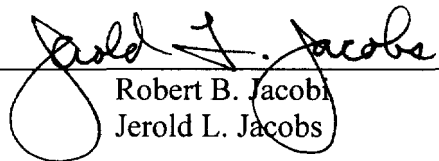
9. Second, the Maximizers urge that this multi-channel protection should continue for six (6) months after the DTV transition has occurred, so that licensees in the Maximizers' dilemma will have ample time to amend their DTV maximization applications to finalize their post-transition DTV maximization and replication proposals. In other words, since the Commission does not have the power to waive the May 1, 2000 filing deadline for DTV maximization and replication applications, similarly situated licensees should be allowed to file a maximization or replication application for one of the possible channels, which application will remain on file and be subject to channel change amendment until six months after the DTV transition has occurred. By that time, each licensee will be expected to have amended its pending maximization or replication application to specify its final channel choice. Once that amendment is accepted, the other channels specified in their letters of intent will no longer be subject to interference protection from Class A stations in the analog and DTV engineering data bases.

10. In sum, the Maximizers believe that the above data base and application-amendment solutions to the issues posed in Paragraph 34 of the NPRM provide a just and fair balancing of the relative interference-protection rights of full-power DTV licensees and emerging Class A LPTV licensees.

WHEREFORE, in light of the foregoing, the Three DTV Maximizers respectfully request that the Commission should adopt a Report and Order in this proceeding consistent with these Comments.

Respectfully submitted,

NOE CORP. L.L.C.  
LOUISIANA TELEVISION BROADCASTING  
CORPORATION  
CHANNEL 3 OF CORPUS CHRISTI, INC.

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Dated: February 10, 2000